

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY VILLAREAL,
Plaintiff,
v.
D. B. HERNANDEZ, et al.,
Defendants.

No. 1:22-cv-01376-ADA-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(ECF No. 15)

Plaintiff Anthony Villareal (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 8, 2023, the assigned Magistrate Judge screened Plaintiff’s first amended complaint and found that it stated a cognizable claim against Defendants Hurtado and Coronado, correctional officers, for excessive force in violation of the Eighth Amendment, but failed to state any other cognizable claims for relief against any other defendants. (ECF No. 10.) The Magistrate Judge ordered Plaintiff to either file a second amended complaint or notify the Court of his willingness to proceed only on the cognizable claims identified by the Court. (*Id.* at 12.)

On February 27, 2023, Plaintiff filed a second amended complaint, (ECF No. 12), and on March 9, 2023, Plaintiff also filed a notice of his willingness to proceed only on the cognizable claims identified by the February 8, 2023, order, (ECF No. 13). Based on these conflicting filings, the Magistrate Judge granted Plaintiff an opportunity to file a written response clarifying his intent.

1 (ECF No. 14.) Plaintiff was directed to file a written response within twenty-one days clarifying
2 how he intended to proceed in this action and was warned that if he failed to respond to the Court's
3 order, the Court would strike the second amended complaint and recommend that this action
4 proceed only on the claims found cognizable in the first amended complaint. (*Id.* at 2.)

5 Following Plaintiff's failure to file a response, on April 17, 2023, the Magistrate Judge
6 issued an order striking the second amended complaint and findings and recommendations
7 recommending that this action proceed on Plaintiff's first amended complaint against Defendants
8 Hurtado and Coronado for excessive force in violation of the Eighth Amendment. (ECF No. 15.)
9 The Magistrate Judge further recommended that all other claims and defendants be dismissed based
10 on Plaintiff's failure to state claims upon which relief may be granted. (*Id.*) The findings and
11 recommendations were served on Plaintiff and contained notice that any objections were to be filed
12 within fourteen (14) days after service. (*Id.* at 10.)

13 On May 5, 2023, Plaintiff filed a document which the Magistrate Judge construed as a
14 motion to appoint counsel. (ECF No. 16.) The motion was denied, without prejudice, but the
15 Magistrate Judge found it appropriate to extend the deadline for Plaintiff to file any objections to
16 the April 17, 2023, findings and recommendations. (ECF No. 17.)

17 On May 18, 2023, Plaintiff filed a document indicating that he understands the Court's
18 decision and is willing to proceed on the Court's findings of cognizable claims. (ECF No. 18.)

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
20 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's non-
21 opposition to the findings and recommendations, the Court finds the findings and recommendations
22 to be supported by the record and by proper analysis.

23 Accordingly,

- 24 1. The findings and recommendations issued on April 17, 2023, (ECF No. 15), are adopted
25 in full;
- 26 2. This action shall proceed on Plaintiff's first amended complaint, filed February 2, 2023,
27 (ECF No. 8), against Defendants Hurtado and Coronado for excessive force in violation
28 of the Eight Amendment;

3. All other claims and defendants are dismissed from this action for failure to state claims upon which relief may be granted; and

4. This action is referred back to the Magistrate Judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: June 30, 2023


UNITED STATES DISTRICT JUDGE